IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JETRONIC INDUSTRIES, INC.,
F.P. WOLL & COMPANY, and
WOLF, BLOCK, SCHORR & SOLIS-COHEN, LLP, :
Plaintiffs

v. NO. 00-CV-4429

THE HOME INSURANCE COMPANY and
RISK ENTERPRISE MANAGEMENT, LTD.,
Defendants

MEMORANDUM AND ORDER

McLaughlin, J. February 28, 2003

This is an action for a declaratory judgment. The action originally was instituted by Jetronic Industries, Inc. ("Jetronic") and F.P. Woll & Company ("Woll"), seeking a determination that Risk Enterprise Management, Limited ("REM") and Home Insurance Company ('Home") were obligated to pay the costs of defense and to indemnify Jetronic under a liability insurance policy issued by Home to Jetronic. The policy was issued in 1977. The action was brought on the basis ***of*** a Settlement Agreement and Stipulated Judgment entered into between Jetronic and Woll in F.P. Woll & Company **v.** Fifth and Mitchell Street Corporation et al., No. 96-CV-5973 (E.D. Pa.).

Subsequent to the filing of the complaint, Jetronic filed for bankruptcy. By order of the Bankruptcy Court dated January 2, 2002, Jetronic's "duty to defend" claim was abandoned in favor of its counsel, Wolf, Block, Schorr, and Solis-Cohen L.L.P. ("Wolf Block"). Wolf Block then waived its rights as a creditor *of* Jetronic in the bankruptcy proceeding.

The plaintiffs then filed an amended complaint, adding Wolf Block as a plaintiff, seeking recovery on Jetronic's "duty to defend" claim. Wolf Block and Home have settled the "duty to defend" claim.

Under the settlement agreement between **Woll** and Jetronic, Jetronic assigned to Woll its duty to indemnify claim against Home **to** the extent **of** the Stipulated Judgment in the amount **of** $350,000, but retained all other indemnity rights under the Home policy. The only remaining claim is that of Woll – that Home has a duty to indemnify Jetronic by paying the $350,000 stipulated judgment.

REM moves for summary judgment on the grounds that (1) REM is not an insurer and did not issue the insurance policy at issue, and (2) there is no pending claim for which REM could be held liable.[1]

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[1] Summary judgment is appropriate if, viewing the facts and all reasonable inferences derived therefrom in the light most

REM presents the following facts by way of affidavit and documentary evidence. Home is a New Hampshire corporation with its principal place of business in New York, New York. Home ceased issuing insurance policies in 1995. Home appointed REM to manage its business. Home's principal regulator, The New Hampshire Insurance Department, approved that appointment.

REM is a Delaware corporation with its principal place of business in Cranbury, New Jersey. REM is not an affiliate **or** subsidiary of Home. REM is not an insurance company. It did not issue any of the insurance policies at issue in this action, nor has it issued any other insurance policies. REM has assumed responsibility for managing the business of Home, but it has not assumed liability for any policies issued by Home, or any debts or obligations **of** Home. It manages the remaining business **of** Home. REM did not exist in 1977, when the policy was issued. In a letter dated October 20, 1998, from Catherine Rothman-Brous of REM to Peter J. Kursman, President of Jetronic, Ms. Rothman-Brous stated: REM "has been appointed to manage the business of Home."

REM argues that because it is a disclosed agent, it is not liable for the contractual obligations of its disclosed

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favorable to the non-moving party, there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

principal, citing Viso v. Werner, 369 A.2d 1185, 1187 (Pa. 1977); Bash v. Bell Telephone Co. of Pennsylvania, 601 A.2d 825, 833 (Pa. Super. 1992).[2] It argues in the alternative that the settlement agreement under which Woll is making its claim did not assign any claim against REM.

In opposition to the motion, Woll did not present any evidence to dispute the facts set forth by REM. It simply argued that REM has not presented sufficient documentary evidence to dispel suspicions that there may be a "successor liability problem." But Woll does not explain on what basis REM is a successor in interest to Home. Nor did Woll file a Rule 56(f) affidavit, explaining what additional discovery it needs to justify its opposition to the motion. At the oral argument on the motion, Woll admitted that it did not conduct any discovery on REM's liability in this action.

The Court will grant the motion. Woll has not presented any evidence that is sufficient to create a material issue of fact as to REM's alleged liability. It has instead relied on speculation and suspicion. Discovery is over and more is now required.

An appropriate order follows.

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[2] The parties agree that the Court should apply Pennsylvania law for the purposes of this motion.

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Plaintiffs

v. NO. 00-CV-4429

THE HOME INSURANCE COMPANY and
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Defendants

ORDER

AND NOW, this 28th day of February, 2003, upon consideration of Defendant Risk Enterprise Management's Motion for Summary Judgment (Docket #28), Plaintiff F.P. Woll and Company's Opposition, and Defendant's Reply, it is hereby Ordered that said motion is granted. Judgment is entered for Defendant Risk Enterprise Management and against Plaintiff F.P. Woll and Company.

BY THE COURT:

Mary A. McLaughlin

MARY A. MCLAUGHLIN, J.